

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re Applications of)	MM Docket No. 99-153
)	
READING BROADCASTING, INC.)	File No. BRCT-940407KF
)	
For Renewal of License of Station)	
WTVE(TV), Channel 51,)	
Reading, Pennsylvania)	
)	
and)	
)	
ADAMS COMMUNICATIONS)	
CORPORATION)	File No. BPCT-940630KG
)	
For Construction Permit for a)	
New Television Station On)	
Channel 51, Reading, Pennsylvania)	

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TO: Administrative Law Judge Richard Sippel

REPLY TO ADAMS' APPEAL REQUEST

Reading Broadcasting, Inc. ("Reading"), by its counsel and pursuant to the Presiding Officer's Order, FCC OOM-06 (released January 18, 2000), hereby replies to the December 29, 1999 "Request for Permission to File Appeal" ("Request") by Adams Communications Corp. ("Adams"). The Request pertains to the Presiding Officer's ruling that Adams failed to present a valid basis for designating an unauthorized transfer of control issue and a related misrepresentation/lack of candor issue against Reading. See Memorandum Opinion and Order, FCC 99M-85 (released December 21, 1999) (the "MO&O"). In support, the following is shown:

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A. Adams' Request Conflicts With Section 1.301.

Section 1.301(b) of the Commission's Rules governs appeals from interlocutory rulings that are not appealable as a matter of right pursuant to Section 1.301(a). The MO&O is not appealable as a matter of right pursuant to Section 1.301(a), so the requirements of Section 1.301(b) apply to the Request. Although Adams' Request acknowledges those requirements, it does not satisfy them. In particular, Adams does not and cannot show that the Request involves "a new or novel question of law or policy."¹ Likewise, for the reasons stated below, Adams cannot show that the MO&O contains errors that would require a remand. On the contrary, the MO&O appropriately rejected Adams' far-fetched and internally inconsistent theories about Reading's corporate activities.

B. There Was No Coup.

In its original motion to enlarge issues, filed on October 20, 1999, Adams presented its original theory about an unauthorized transfer of control. This original theory was that Michael Parker had orchestrated a "coup d'état" of Reading's Board of Directors as of October 30, 1991, immediately prior to Reading's application for consent to a long-form transfer of control. Reading showed in its

¹Adams falsely claims instead that the MO&O is based on an incomplete and inaccurate understanding of the underlying facts, due to Reading's "dilatory, staggered and misleading delivery of information." Request at 1. The reality is that Reading has complied with all discovery orders, and any staggering in the delivery of information is attributable to Adams' filing of four separate motions to produce documents. Moreover, as Reading has shown, the information contained in Reading's stock records, which were produced on the date ordered by the Presiding Officer, previously was a matter of record.

Adams' failure to comply with Section 1.301(b) is consistent with Adams' decision to flout other procedural rules in pursuing the requested issues (see Section 1.229(c) – replies limited to matters raised in the opposition - and 1.294(d) – additional pleadings may be filed only if specifically requested or authorized). It is Adams, not Reading, that has deliberately violated Commission rules.

Opposition, filed on November 19, 1999, that there was an internal corporate dispute between two competing shareholder groups in 1991-92 that resulted in the creation of two competing boards of directors, but this private dispute did not involve a transfer of control under any applicable precedent. At the October 30, 1991 stockholders' meeting, a majority of the company's stockholders voted for a board of directors consisting of Mr. Parker (a prior board member), Dr. Clymer (a prior board member), Mr. Cohen (an original stockholder and a member of both boards), Mr. McCracken and Judge Rose. Reading showed that this vote by the stockholders was an exercise of existing control retained by the stockholders, not an unauthorized transfer of control. Reading further showed that a settlement agreement was reached in 1992 and that all contested corporate actions were ratified.

In its Reply pleading (filed December 1, 1999) and in its cross-examination of Mr. Parker, Adams argued that the contested shareholder vote was a "proxy battle," apparently on the theory that some votes were cast by proxy. In invoking this claim, Adams cited a Commission policy statement, Tender Offers and Proxy Battles, 59 RR 2d 1536 (1986). However, that policy statement specifically states that "the use of the proxy mechanism, either by the incumbent management or a challenging shareholder group, in conjunction with the election of less than 50 percent of the Board generally would not constitute a transfer of control." Id. at ¶ 12 (footnotes omitted). In Reading's case, the new five-member board included two prior board members and a third member supported by both factions. This situation is completely different from a proxy battle involving an entirely new

slate of directors whose purpose is to alter corporate management or direction, which is the only situation where the Commission has found a change in corporate directors by a for-profit, stock-issuing corporation to be a transfer of control. See, e.g., Storer Communications, Inc., 101 FCC 2d 434 (1985).²

Related to Adams' "coup" theory is Reading's mis-reporting of its officers and directors in its 1991 long-form transfer of control application. There is no plausible motive for not listing the updated officers and directors when Reading was seeking Commission consent to a long-form transfer of control or immediately after Reading had consummated the long-form transfer of control. (Adams argues in its Request, at 19-20, that the long-form application was "an effort to back-fill, to obtain some after-the-fact approval" for the transaction effectuated in October 1991. If this was the case, then Reading would have listed the officers and directors correctly.) These reporting errors were subsequently corrected by Reading within the 1989-94 license term.

C. The Management Services Agreement
Did Not Transfer Control to Parker

Because Adams apparently realized that its "coup" theory is baseless, in its Reply pleading Adams advanced additional transfer of control theories. One of these is the theory that the company's Management Services Agreement with Partel, Inc. transferred control of Reading to Partel, Inc. However, Adams had previously submitted a copy of the Management Services Agreement as part of an

² Adams' "coup" theory also cannot be squared with the record of this case, which shows that in August, 1997, Reading's board of directors terminated Mr. Parker as President of Reading and cancelled his management agreement. If Mr. Parker had assumed control of the board in 1991, it can be presumed that the board would not have subsequently taken those actions.

earlier Motion to Enlarge Issues, without making any claim that the agreement resulted in an unauthorized transfer of control. See Motion to Enlarge Issues (False Statements and Misrepresentations by Michael Parker in Bankruptcy Proceeding), filed October 18, 1999, at Exhibit 2. Adams never explained why this document was innocuous in October and yet pernicious in December. Adams also never explained how the agreement could involve a transfer of control to Mr. Parker when it explicitly reserved final programming decisions to Reading's authority, precluded Mr. Parker from entering into contracts longer than one year or trade agreements of any duration without approval of Reading's board and precluded Mr. Parker from writing corporate checks. Adams never cited any decision holding that this type of agreement presents a transfer of control. Finally, it also bears noting that this argument is internally inconsistent with Adams' "coup" argument, because Mr. Parker would never have needed to wrest control of the board of directors if the Management Services Agreement had already given him control of the company.

D. There Was Not a 50% Change In Ownership
Prior to the Long-Form Application.

A second new argument presented in Adams' Reply was the claim that Reading had effectuated a greater than 50% change in ownership through the issuance of stock in October, 1991. This argument now is the main focus of Adams' Request.

Adams and Reading agree that at least 48% of the Reading stock issued in October 1991 went to previously-approved stockholders. See Request at 8; Metromedia, Inc., 98 FCC 2d 300, 305 (¶ 8) (1984). The dispute is over a 4.8%

portion of stock issued to STV Reading, Inc. ("STV"), a company formed by Dr. Henry N. Aurandt, a previously-approved stockholder. See Reading Ex. 17. Reading takes the position that the STV stock is attributable to Dr. Aurandt under Section 73.3555, Note 2(d). Reading submitted a supporting declaration from Jack Linton, who stated that he had reviewed the STV stock register and that it indicates that Dr. Aurandt and his wife owned 90.66% of the STV stock as of October 15, 1991. See Opposition to Motion of Adams Communications Corporation for Leave to File Supplement to Consolidated Reply, Exhibit B. Adams argued that the STV stock cannot be attributed to Dr. Aurandt because: (a) Mr. Linton's deposition testimony suggested there was a dispute over the ownership of STV's stock at the time; and (b) Mr. Parker voted the STV stock as President of STV on October 30, 1991 and February 4, 1992, at a time when he was opposed to Dr. Aurandt.

After challenging Reading to produce a copy of STV's stock register (Request at 11 n.11) to support Mr. Linton's declaration, at the hearing Adams opposed Reading's effort to introduce the STV stock register into evidence. The STV stock register indicates that as of the 1991-92 time period in question, Dr. and Ms. Aurandt owned 90.66% of STV's stock. See Reading Ex. 17A.³

At the hearing, Mr. Parker was cross-examined as to the circumstances by which he was voted President of STV for purposes of the October 31, 1991 and February 4, 1992 votes of Reading's stockholders. Mr. Parker testified that at the

³Adams' claim about Mr. Linton's deposition testimony is not supported by a review of the deposition. Mr. Linton's deposition testimony (p. 63) makes it clear that the dispute between Dr. Aurandt and the Massey Group over STV involved the right to vote the STV stock, not the ownership of the STV stock. See Ex. A.

time, he was aware that STV stock certificates had been issued to Harvey , Paul Parloff, Stella Pavloff and Alfred Busby (the “Massey Group”) by Dr. Aurandt pursuant to a judgment that the Massey Group had obtained against Dr. Aurandt. See Reading Ex. 17A at 3-7. Mr. Parker believed that Dr. Aurandt had not issued a certificate to himself for STV stock, even though Dr. Aurandt was recognized as the founder and principal owner of STV. Mr. Parker therefore asked the Massey Group to hold STV shareholders’ meetings to elect Mr. Parker as President of STV for purposes of voting STV’s stock in Reading’s shareholder meetings of October 30, 1991 and February 4, 1992. The validity of those actions was contested by Dr. Aurandt.

Mr. Parker testified that after the contested votes, he was shown the STV stock register and realized that the contested STV shareholder meetings were invalid. In the September 1992 Settlement Agreement among Mr. Parker, Dr. Aurandt, the Massey Group and others, the parties agreed that Mr. Parker and Linda Hendrickson of Partel, Inc. were to resign as President and Director of STV, “effective the day before their respective purported elections to those offices.” Adams Ex. 27 at 26. Notwithstanding that action, the parties agreed that the voting of STV stock by Mr. Parker “was a valid and duly authorized action on behalf of STV.” Id. Mr. Parker testified that the voting of STV stock ultimately proved to be irrelevant to the outcome of Reading’s shareholders’ meetings. Mr. Linton’s deposition testimony echoes that assessment. See Ex. A at 63-64. Therefore, the disputed vote of the STV stock by Parker not only was ratified by

subsequent corporate action, but also had no effect on control over Reading, because it did not alter the outcome of Reading's shareholder meetings.

It is irrelevant whether the voting of STV stock by Mr. Parker was initially approved by Dr. Aurandt or, as Reading has shown, was initially disapproved but later ratified by Dr. Aurandt. None of the disputed actions made any difference as to the ultimate ownership of the STV stock.⁴ Although, as Mr. Linton's deposition testimony indicates, there was initially a dispute over whether the authorization to vote STV's stock was valid, that dispute is irrelevant to the issue of whether Reading transferred 50% or greater stock ownership to new owners. The record shows that Dr. Aurandt (with his wife) was the 90.66% stockholder of STV in 1991-92, which means that the STV stock was attributable to Dr. Aurandt, a previously-approved stockholder, pursuant to Section 73.3555, Note 2(d). Adams has failed to meet its burden under Section 1.229(d) to show the contrary through specific allegations of fact supported by declarations or documents subject to official notice.

E. There Was No Cover-Up at the FCC.

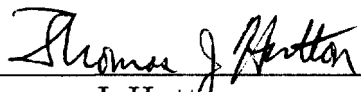
The balance of Adams' Request is an effort to concoct a conspiracy between Reading and its FCC counsel, Sidley & Austin, to cover up the alleged unauthorized transfer of control of WTVE from Reading Broadcasting, Inc., as debtor-in-possession, to Reading Broadcasting, Inc.

⁴The STV stock records show no changes in STV's stock ownership during 1991-92. See Reading Ex. 17A. Clearly, the disputed and later rescinded appointment of Mr. Parker as President of STV did not change STV's ownership. This appointment was analogous to a revocable proxy or power of attorney to vote stock for a particular purpose, which does not constitute a transfer of ownership or control by the stockholder.

Adams argues that the transfer of control of WTVE from Reading Broadcasting, Inc., as debtor-in-possession, to Reading Broadcasting, Inc. was actually consummated on October 15, 1991, when Reading's new stock was issued, not in 1992 after Reading's long-form transfer of control application was granted. However, Mr. Parker explained that the transfer of control from debtor-in-possession status back to normal operating status pursuant to the company's often-amended Plan of Reorganization involved many other steps beyond issuance of stock, including satisfaction of each of Reading's multiple classes of creditors. This explanation is supported by the bankruptcy documents. See Request, Attachment C (particularly the definition of consummation on page 3); Adams Ex. 20. Adams' claims of a cover-up are based on Adams' failure to understand or acknowledge the distinctions between a normal transfer of control transaction and a transaction to effectuate a Plan of Reorganization under bankruptcy law.

Respectfully submitted,

READING BROADCASTING, INC.

By 
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Its Attorney

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January 21, 2000

Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re: Applications of : MM Docket No. 99-153
READING BROADCASTING, INC. :
For Renewal of License of : File No. BPCT-940407KF
Station WTVE (TV), Channel :
51, Reading, Pennsylvania :
and : File No. BPCT-940630KG
ADAMS COMMUNICATIONS :
CORPORATION :
For Construction Permit for :
a New Television Station :
to Operate on Channel 51, :
Reading, Pennsylvania :

DEPONENT: JACK A. LINTON, ESQUIRE

DATE AND TIME: Monday, November 8, 1999
at 10:15 a.m.

LOCATION: Comfort Inn
2200 Stacy Drive
Reading, Pennsylvania

Berks Court Reporting Service
By: Lori A. Dilks, RPR
12 Pacific Avenue
Sinking Spring, Pennsylvania
(610) 678-9984

COPY

1 A. Initially?

2 Q. -- initially? Thank you.

3 A. To my knowledge, initially Dr. Aurandt was
4 everything. I didn't want to invest in it. He asked.
5 I didn't want to.

6 Q. This is the company that had the decoders
7 for the soft porn?

8 A. That's correct. The boxes that didn't
9 work. And that's -- my definition is soft porn. It may
10 have been harder porn than --

11 MR. BECHTEL: Off the record.

12 (Discussion was held off the record.)

13 BY MR. BECHTEL:

14 Q. Do you know the circumstances under which
15 Mr. Parker arrived at this meeting with the proxy of STV
16 Reading?

17 A. I'd have to look at something, but I
18 presume he got it from Massey, Harvey Massey, Pavloff
19 and Busby 'cause they had acquired, I think, like 9.9
20 percent of the stock of STV of Reading. But there was a
21 dispute whether that was 9.9 or all of it. And in my
22 judgment at that time, because I represented Dr. Aurandt
23 and his interest and my loyalties were to him, it was
24 9.9.

25 Whether the stock had actually been issued,

1 I think there was a hundred shares issued, but that's
2 been a subject matter of confusion over the last ten
3 years, nine, whatever the amount of years were. I don't
4 really remember specifically, but that's how he got it.

5 And then I guess -- I know Mike claimed he
6 was President at that time through the election of
7 Massey, et al. And then very shortly thereafter he
8 resigned because I didn't think he wanted the
9 responsibility of STV, and I can't blame him because I
10 don't think anybody knew what STV really was at that
11 point in time other than a creditor of RBI. And I
12 believe they got 19,000 shares of RBI, so that's how STV
13 would have been able to vote at an RBI meeting.

14 Q. Now, do you have knowledge of the
15 circumstances under which Mr. Parker arrived at this
16 meeting with proxies to vote the STV Corporation stock
17 and the proxies to vote the stock of Messrs. Busby,
18 Massey, Pavloff and Pavloff?

19 A. Other than that they had given him the
20 proxies. Again, repeating myself, Busby, Massey and the
21 two Pavloffs would have been -- as a result of their
22 position that they owned the RBI stock through the
23 garnishment, he would have been able to vote the STV
24 stock if they owned the stock of STV through the same
25 garnishment, which they claimed that they did at that

1 time.

2 So that would have been the basis for Mike
3 Parker claiming the authority to vote them. Our
4 position was nobody had the right to vote any stock
5 because of September 14th. Also, with respect to the
6 STV stock itself, there was a dispute whether they had
7 9. -- and don't hold me to it; it might have been 9.89
8 or something of the STV stock -- therefore, that's all
9 they could have voted.

10 In other words, they couldn't issue the
11 proxy. Their position was that they could. When I say
12 they, Parker, Hetrick who represented Massey, et al.,
13 as I understand it.

14 Q. And I will try that question a different
15 way. Were you surprised at the meeting when Mr. Parker
16 showed up with these proxies that gave him the clout
17 that he had?

18 MR. HUTTON: I'm going to object to the
19 form of the question. The term clout, I think, may lack
20 a foundation.

21 BY MR. BECHTEL:

22 Q. The apparent clout.

23 A. I don't think I really was because it
24 didn't make any difference anyway. He had more than
25 enough. Most of the Aurandt supporters had fallen by

1 the wayside between the two meetings. See, Dr. Aurandt
2 had obtained a lot of proxies for the September 14th
3 meeting based upon his view of what was happening at
4 Reading Broadcasting. Thereafter, Mike solicited a lot
5 of proxies in accordance with his view.

6 And I believe, if you look at the list,
7 that Mike's view prevailed so it probably wouldn't have
8 made any difference. Just so you're aware of it, Dave
9 Hyman and Caroline Hyman, that's his daughter; he was
10 one of the original Shareholders of Reading
11 Broadcasting. And they had all become disenchanted with
12 Dr. Aurandt, particularly Dr. Clymer who, as you can see
13 going through the Minutes, there were times he loved
14 Mike; there were times he hated Mike. But a lot of
15 these doctors were his good friends, and they relied
16 very heavily on Dr. Clymer's judgment because he's a
17 very knowledgeable man, sometimes too knowledgeable, but
18 that....

19 Q. I appreciate your patience because I'm --
20 a couple more questions and I think we got this done.

21 A. As much as you want. That's why I'm here,
22 I guess.

23 Q. If you go to the bottom of Page 3 of the
24 Minutes --

25 A. Yes.

CERTIFICATE OF SERVICE

I, Inder Kashyap, a secretary in the law firm of Holland & Knight LLP
do hereby certify that on January 21, 2000, a copy of the foregoing Reply To
Adams' Appeal Request was delivered by hand to the following:

The Honorable Richard L. Sippel
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